*COURT NO. 2*

**THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

Appeal from Order No. 394 of 2002

The Oriental Insurance Company Ltd. … **Appellant.**

Versus

Sri Bhagti Ram Raturi
and others. … **Respondents.**

**Coram : Hon'ble P.C. Verma, J.**
**Hon'ble B.S. Verma, J.**

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***( in short the Act )*** against the judgment and Award dated 09-10-2002, passed in M.A.C.T. Petition No. 3 of 2001, Sri Bhagti Ram Raturi & four others Vs. Sri Ginder Pal Verma and 3 others, by Motor Accident Claims Tribunal, Tehri Garhwal ***( hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 6,43,,000/- along with interest @ 6% per annum in favour of the claimant-respondents as against the Opposite Party No.3 –appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of holding of valid driving licence by the driver of offending bus and breach of policy conditions as well as quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

Brief facts of the case are that Sheesh Ram **( *the deceased )*** has died in a motor accident on 16.11.2000. The deceased was going by bicycle on the fateful day and at about 10 a.m., he was hit by the offending bus from behind with the result Sheesh Ram sustained grievous injuries and died. The deceased is stated to be aged 20 years at the time of death and was getting Rs.

5000/- as salary. The parents of the deceased filed the claim petition. The Opposite Parties No. 1 to 2, i.e. the owner, driver and insurer of the ill-fated bus, contested the claim petition by filing their written statements on different grounds. The Insurance Company-appellant has pleaded that the driver of the vehicle was not holding a valid driving licence and the owner was not possessing valid papers in respect of the vehicle in question.

The learned Tribunal framed as many as four Issues in the case. On Issue No. 1, the Tribunal has come to the conclusion that the motor accident resulting into grievous injuries and consequent death of the deceased has occurred due to rash and negligent driving by the driver of the bus in question. On Issue No.2 the Tribunal has held that the driver of the ill-fated bus was holding a valid driving licence on the date of accident. On Issue No.3, the Tribunal has found that Original Certificate of Insurance has been filed and it has been found that the Policy was Comprehensive for the period 19.6.2000 to 18.6.2001. On Issue No.4, the Tribunal has observed that the Insurance Company was liable to pay the compensation. The income of the deceased was determined to be Rs. 5,000/- per month, thereby the annual income was assessed at Rs. 60,000/-. One third of this amount was deducted towards personal expenses of the deceased. The learned Tribunal has applied multiplier of 16 to determine just amount of compensation for loss of income of the deceased i.e. Rs. 6,40,000/-. Besides, the Tribunal has awarded sums of Rs. 2,000/- towards funeral expenses, Rs. 1,000/- towards damage to the bicycle. Thus, total amount of Rs. 6,43,000/- has been awarded as compensation along with interest @ 6% per annum as mentioned in the impugned order.

We have heard learned counsel for the appellant-Insurance Company, Mr. D.S.Patni, as well as learned counsel for the claimant-respondents, Mr. Rajendra Dobhal, and have gone through the entire material on record including the impugned judgment and award.

It has been submitted before us on behalf of the appellant that the driver of the bus involved in the accident was not holding a valid driving licence, therefore, the appellant-Insurance Company is not liable to pay the compensation and on this ground alone the appeal deserves to be allowed. We have perused the record. The learned Tribunal has framed Issue No.2 on this point on the plea of the appellant. We also find that copy of the driving licence of the driver of bus No. DL-1 PA/1143, namely Jagat Singh, has been filed on the record as paper no. 19-C/1, which was issued by the Licensing Authority on 18.3.1999. This licence was valid up-to16.2.2002. The details of the driving licence has also been disclosed in the written statement filed by the driver as paper no. 16-Kha. Thus, it is clearly proved on record that the driver of the vehicle involved in the accident was holding a valid driving licence on the date of accident, i.e. 16-11-2000. The learned counsel failed to point out as to how the driver of the vehicle was not holding a valid driving licence. The argument in this regard is misconceived and not tenable.

The learned counsel next challenged the quantum of compensation determined by the Tribunal. So far as the contention of the learned counsel for the appellant challenging the quantum of compensation is concerned, it is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal

except on the ground as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [( 2002 ) 7, Supreme Court Cases, 456]***. In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7, S.C.C. 456 ( supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

No other point was urged or argued before us.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

28-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP